

REMARKS

Claims 1-59 are pending in this application. By this Amendment, claim 20 is amended. The amendment introduces no new matter. Reconsideration of the application based on the above amendment and the following remarks is respectfully requested.

The Office Action, in paragraph 2, asserts that claims 40-58 are substantial duplicates of claims 1-19. However, claims 40-58 are directed to a system for holding an organ or tissue. Claims 1-19 are directed to an apparatus for holding an organ or tissue. As such, Applicants respectfully submit that claims 1-19 and 40-58 are not substantial duplicates.

The Office Action, in paragraph 4, rejects claims 1-7, 12, 13, 15-20, 23-27, 31, 32, 33, 40-46, 51, 52 and 54-58 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,385,821 to O'Dell et al. (hereinafter "O'Dell"). The Office Action, in paragraph 7, rejects claims 8-11, 28, 29, 34, 35 and 47-50 under 35 U.S.C. §103(a) as being unpatentable over O'Dell in view of U.S. Patent No. 4,530,816 to Douglas-Hamilton or U.S. Patent No. 3,810,367 to Peterson. The Office Action, in paragraph 8, rejects claims 14, 38, 39 and 53 under 35 U.S.C. §103(a) as being unpatentable over O'Dell in view of U.S. Patent No. 3,713,302 to Reviel. The Office Action, in paragraph 9, rejects claims 22, 36 and 37 under 35 U.S.C. §103(a) as being unpatentable over O'Dell in view of EP 0 376 763 to McKelvey et al. (hereinafter "McKelvey"). The Office Action, in paragraph 10, rejects claim 21 under 35 U.S.C. §103(a) as being unpatentable over O'Dell in view of McKelvey and International Patent Publication No. WO 96/29865 to Fahy et al. (hereinafter "Fahy"). These rejections are respectfully traversed.

The Office Action asserts that O'Dell allegedly teaches an apparatus or system with features that are considered to correspond to the combinations of all of the features recited in independent claims 1, 20 and 40. The analysis of the Office Action fails for at least the following reasons.

O'Dell does not teach an organ or tissue supporting surface configured to support an organ or tissue within said portable housing, as recited in claims 1, 20 and 40. The Office Action asserts that the bottom surface of housing 98 of O'Dell can be considered to correspond to this feature. O'Dell teaches, with reference to Figs. 1 and 2, chamber 10 with flexible compliant bottom 14, and, with reference to Figs. 9 and 10, preservation device 98 (col. 5, lines 60-64; col. 8, lines 49-55). However, it is unreasonable to assert that either bottom surface of preservation device 98 or element 14 in Figs. 1 and 2 can be considered to correspond to an organ or tissue supporting surface configured to support an organ or tissue within said portable housing.

For example, the alleged bottom surface of preservation device 98 and flexible membrane 19 are not configured to support an organ or tissue within said portable housing. In this regard, the bottom surface of preservation device 98 is merely a surface, or wall, of the preservation device 98 and is clearly not configured to support an organ or tissue, as recited in the pending claims. Flexible member 14 is also a mere surface of the chamber 10. Additionally, flexible membrane member 14 expands in response to pressure to accommodate the increase in compartment volume of the chamber 10, and not in response to any alleged organ or tissue. In this regard, a surface of a chamber in which an organ is housed or placed, even under conditions of incidental contact of the organ with the wall, cannot reasonably be considered to correspond to being configured to support the organ. In other words, the bottom wall of preservation device 98 and flexible member 14 are not configured in any fashion to support any organ despite the possibility that an organ may in some manner touch or come into contact with the organ as a result of forming an enclosed space around the organ.

Further, the pending claims specifically recite the features of a transporter; a portable housing; and an organ or tissue supporting surface configured to support an organ or tissue within said portable housing. In this regard, to any extent that the bottom surface of

preservation device 98 or chamber 10 were considered to support the organ, O'Dell does not disclose the separately recited features of a portable housing and an organ or tissue supporting surface configured to support an organ or tissue within said portable housing. Such a distinction is clearly shown in and supported by, for example, Figs. 4C and 4D of the specification.

MPEP §2131.01 states "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (emphasis added) *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). This standard is clearly not met here for at least the reasons set forth above.

Douglas-Hamilton, Peterson, Reviel, McKelvey and Fahy are not applied in a manner by the Office Action to overcome the above-identified shortfalls in the application of O'Dell to the subject matter of the pending claims.

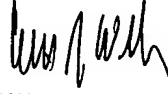
For at least the foregoing reasons, the applied reference cannot reasonably be considered to teach the combinations of all of the features recited in independent claims 1, 20 and 40. Additionally, claims 2-19, 21-39 and 41-59 are also not taught, nor would they have been reasonably suggested, by the applied references for at least the respective dependence of these claims, directly or indirectly, on an allowable base claim, as well as for the separately patentable subject matter that each of these claims recites.

According, reconsideration and withdrawal of the rejections of claims 1-59 under 35 U.S.C. §§102(b) and 103(a) as being anticipated by, or unpatentable over, the applied references are respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-59 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Christopher J. Wheeler
Registration No. 60,738

WPB:CJW/clf

Attachment:
Petition for Extension of Time

Date: April 9, 2008

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--